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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/731,220

12/09/2003

Michael J. Sailor

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GREER, BURNS & CRAIN
300 S WACKER DR
25TH FLOOR
CHICAGO, IL 60606

EXAMINER

WOOD, JARED M

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

09/30/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/731,220	Applicant(s) SAILOR ET AL.	
	Examiner JARED WOOD	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12 and 14-31 is/are pending in the application.
- 4a) Of the above claim(s) 4-7, 10, 12, 27 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 14, 15 and 17-26 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9, 29 and 31 is/are rejected.
- 7) ☒ Claim(s) 8 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The examiner acknowledges receipt of the response filed 07/28/2010. Claims 11, 13, and 16 are cancelled. Claims 4-7, 10, 12, 27 and 28 are currently withdrawn. It is noted that in the claims filed 07/28/2010, the status indicators for claims 4-7 and 28 are incorrect. The status indicator for these claims should read "Withdrawn". Claims 1-3, 8-9, 14-15, 17-26, and 29-31 are currently presented for examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 9, 29, and 31 are rejected under 35 U.S.C. 102(b) as being unpatentable by WO 01/76564 (Canham, for applicants convenience the text of US 6,929,950 has been used).

As to claims 1-2, Canham is drawn to a microprojectile delivery system and particulate product (title). Specifically, Canham discloses employing porous nanocrystalline silicon (column 6, lines 61-62, and column 14, lines 4-10) and a solid state oxidant disposed within the pores of the silicon, specifically a silver nitrate salt (column 17, lines 35-41), with the porous silicon comprising a thin film (column 13, lines 44-46).

As to claim 9, Canham discloses the solid state oxidant being baked into the pores of the silicon (column 17, lines 35-41).

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As to claim 29, Canham discloses the film being etched into a polycrystalline silicon substrate (column 13, lines 44-46).

As to claim 31, Canham discloses the silicon comprising a powder (column 14, lines 4-10).

Allowable Subject Matter

Claims 3, 14-15, 17-26 are allowed.

Claims 8 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Claim 3 includes the limitation reciting the specific nitrate salt, which has not been shown in the prior art of record. Claim 8 includes the limitation reciting the specific solid state oxidant, which has not been shown in the prior art of record. Claim 14 is drawn to a process not disclosed in the prior art of record. Claim 30 recites a nanowire, which has not been shown in the prior art of record.

Response to Arguments

Applicant's arguments filed 07/28/2010 have been fully considered but they are not persuasive. On page 7, applicant has argued that silver nitrate is not an oxidant because it is not especially reactive and doesn't readily donate electrons. Applicant is mistaken in this assertion. When a material is oxidized it loses or donates electrons. An oxidizing agent or oxidant is a material which, in a reaction, accepts electrons from another material that is oxidized. Reductants are materials which donate electrons in a reaction. Regardless of this, silver nitrate is

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an oxidant material as shown in *On Hazardous Silver Compounds* (Ennis et al.) in the first paragraph of the section on silver nitrate, silver nitrate is a strong oxidant. Ennis further shows that silver nitrate is can react vigorously or explosively in combination with oxidizable materials. According to this disclosure silver nitrate would be reasonably considered an explosive oxidant material.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JARED WOOD whose telephone number is (571)270-5911. The examiner can normally be reached on Monday - Friday, 7:30 am - 5:00 pm, EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571)272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JARED WOOD/
Examiner, Art Unit 1793

/J.A. LORENZO/
Supervisory Patent Examiner, Art Unit
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